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UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

AMERICAN CIVIL LIBERTIES
UNION FOUNDATION OF
SOUTHERN CALIFORNIA,

Plaintiff,

v.

UNITED STATES IMMIGRATION
AND CUSTOMS ENFORCEMENT, et
al.,

Defendants.

No. 2:22-cv-04760-SHK

**DECLARATION OF FERNANDO
PINEIRO**

Honorable Shashi H. Kewalramani
United States Magistrate Judge

1 I, Fernando Pineiro, pursuant to 28 U.S.C. § 1746, hereby declare as follows:

2 1. I am the FOIA Director of the U.S. Immigration and Customs Enforcement
3 (“ICE”) Freedom of Information Act Office (the “ICE FOIA Office”). The ICE FOIA
4 Office is responsible for processing and responding to all Freedom of Information Act
5 (“FOIA”), 5 U.S.C. § 552, and Privacy Act, 5 U.S.C. § 552a (the Privacy Act), requests
6 received at ICE. I have held this position since August 14, 2022, and I am the ICE
7 official immediately responsible for supervising ICE responses to requests for records
8 under the FOIA, the Privacy Act, and other applicable records access statutes and
9 regulations. Prior to this position, I was the Deputy FOIA Officer of the ICE FOIA
10 Office from December 29, 2013, to August 13, 2022, and prior to that I was the FOIA
11 Officer for three years at the Office for Civil Rights and Civil Liberties (“CRCL”) at the
12 U.S. Department of Homeland Security (“DHS”). The ICE FOIA office mailing address
13 is 500 12th Street, S.W., STOP 5009, Washington, D.C. 20536-5009.

14 2. As the FOIA Director, my official duties and responsibilities include the
15 general management, oversight, and supervision of the ICE FOIA Office regarding the
16 processing of FOIA and Privacy Act requests received at ICE. In connection with my
17 official duties and responsibilities, I am familiar with ICE’s procedures for responding to
18 requests for information pursuant to the FOIA and the Privacy Act.

19 3. I make this declaration in my official capacity in support of Defendant
20 ICE’s Motion for Summary Judgment in the above-captioned action and based on my
21 personal knowledge, my review of records kept by ICE in the ordinary course of
22 business, and information provided to me by other ICE employees in the course of my
23 official duties.

24 **I. PROCEDURAL HISTORY OF THE PLAINTIFF’S FOIA REQUEST**
25 **AND THE INSTANT LITIGATION**

26 4. Plaintiff American Civil Liberties Union Foundation of Southern California
27 (“Plaintiff” or “ACLU of SoCal”) submitted a FOIA request, dated April 29, 2022 (the
28 “Request”), by email on May 2, 2022, to the U.S. Immigration and Customs

1 Enforcement (“ICE”), the Department of Homeland Security Office of Inspector General
2 (“DHS OIG”), and the Department of Homeland Security Privacy Office (“DHS PRIV”).
3 The nine-part Request specifically sought:

4 1. Any and all documents, without limitation to date, including any
5 communications, investigatory reports, and any and all exhibits, appendices,
6 or attachments thereto, relating to the hospitalization, death, decision to
7 release from custody, or release from custody of the following individuals:
8 Teka Gulema; Johana Medina Leon; Jose Ibarra Bucio; and/or Martin
9 Vargas Arellano.

10 2. Any and all DHS OIG reports of investigation that are identified in any of
11 the records responsive to Request #1. This includes any and all exhibits,
12 appendices, or attachments to the DHS OIG reports of investigation.

13 3. Any and all ICE OPR reports of investigation that are identified in any of
14 the records responsive to Request #1. This includes any and all exhibits,
15 appendices, or attachments to the DHS OPR reports of investigation.

16 4. Any and all documents and communications, including ICE and IHSC
17 directives, policies, procedures, protocols, or trainings that contain
18 guidance, instructions, or standards about the release from custody of (a)
19 hospitalized detainees; (b) detainees who at the time of release were patients
20 in the care of external healthcare providers or facilities. Detainees specified
21 in (a) and (b) above shall include those being treated for COVID-19 during
22 their hospitalization or treatment at external healthcare providers or
23 facilities.

24 5. Spreadsheets, emails, documents, communications, databases, lists, and
25 other data compilations in the possession of ICE Leadership, ICE
26 Enforcement and Removal Operations, ICE Health Services Corps, and ICE
27 Office of Professional Responsibility that identify detainees who were
28 released from custody while (a) hospitalized (including for COVID-19
treatment); (b) in the full-time care of external healthcare providers or
facilities (including for COVID-19 treatment), or (c) released from custody
immediately prior to transfer to an emergency room, hospital, or external
care facility. Requested materials include, but are not limited to, dates of
hospitalization of detainees, dates of hospital or external care facility
discharge, name of treated detainees’ detention facilities, and reasons for
detainees’ hospitalization or external medical care. These materials should
further include Medical Transfer Summary documents from DHS’s her

1 System and Alien Medical Records System, and any versions of the
2 Significant Detainee Illness Spreadsheet that identify detainees who were
3 released from custody while (a) hospitalized (including for COVID-19
4 treatment); (b) in the care of external healthcare providers or facilities
5 (including for COVID-19 treatment); or (c) released from custody
immediately prior to transfer to an emergency room, hospital, or external
care facility.

6
7 6. Spreadsheets, emails, significant incident reports (SIRs), significant event
8 notification reports (SENs), or documents created by DHS OIG or ICE OPR
9 that mention the release from custody of (a) hospitalized detainees; (b)
10 detainees who at the time of release were patients in the care of external
11 healthcare providers or facilities; or (c) detainees released from custody
immediately prior to transfer to an emergency room, hospital, or external
care facility.

12 7. Spreadsheets, emails, SIRs, SENs, or documents created by DHS OIG or
13 ICE OPR that mention the death of any detainee who had been previously
14 released from custody while (a) hospitalized; or (b) a patient in the care of
15 an external healthcare provider or facility; or (c) released from custody
immediately prior to transfer to an emergency room, hospital, or external
care facility.

16 8. Any and all documents, communications, and other records, including
17 databases, spreadsheets, lists, and other data compilations, that identify
18 detainees who were hospitalized or transferred from detention for off-site
19 medical care due to COVID-19, and were subsequently released from
20 custody while hospitalized, or detainees who were released from custody
21 immediately prior to transfer to an emergency room, hospital, or external
22 care facility to receive treatment for COVID-19. Requested information
23 includes, but is not limited to, dates of hospitalization, detention facility,
24 medical condition/reason for hospitalization or treatment, name and location
of hospital, date of return to detention (if any), date of release from custody
or issuance of order of recognizance (if any), and/or reason for release from
custody.

25 9. Bills, invoices, charges, or records of payment that reflect payments
26 made for healthcare for any detainee who was released from custody while
27 (a) hospitalized; or (b) a patient in the care of an external healthcare
28 provider or facility, and communications about such bills, invoices,
charged, or records of payment.

1 5. On May 16, 2022, the ICE FOIA Office sent Plaintiff a letter
2 acknowledging receipt of the FOIA request. It was assigned tracking number 2022-
3 ICFO-16321.

4 6. Plaintiff filed its initial Complaint on July 12, 2022 [Dkt. 1] and its First
5 Amended Complaint on October 4, 2022 [Dkt. 24].

6 7. Defendant ICE issued interim production responses monthly from
7 November 2022 through February 2025.

8 8. This declaration provides a description of ICE's search in response to
9 Plaintiff's FOIA request.

10 **II. ICE'S STANDARD PROCEDURE FOR INITIATING SEARCHES IN**
11 **RESPONSE TO FOIA REQUESTS.**

12 9. When the ICE FOIA Office receives a FOIA request, the intake staff
13 evaluates it to determine if it is a proper FOIA request per DHS FOIA regulation 6
14 C.F.R. § 5.3. Generally, a FOIA request is considered proper and in compliance with
15 DHS regulations if it reasonably describes the records sought and the records are under
16 the purview of ICE.

17 10. Proper FOIA requests are entered into a database known as Secure Release
18 and assigned a case tracking number. Based upon the requestor's description of the
19 records being sought and ICE FOIA's knowledge of the various program offices'
20 missions, the ICE FOIA Office identifies the program office(s) likely to possess
21 responsive records and tasks the appropriate program office(s) to conduct the necessary
22 searches.

23 11. ICE records are maintained by leadership offices and/or within ICE
24 directorates, including but not limited to, the Office of Public Affairs ("OPA"), the
25 Office of Enforcement and Removal Operations ("ERO"), the Office of Professional
26 Responsibility ("OPR") and the ICE FOIA Office. The program offices are typically
27 staffed with a designated point of contact ("POC") who is the primary person responsible
28 for communications between that program office and the ICE FOIA Office. Each POC is

1 a person with detailed knowledge about the operations of his/her respective program
2 office.

3 12. Upon receipt of a proper FOIA request, the ICE FOIA Office will identify
4 which program offices, based upon their experience and knowledge of ICE's program
5 offices, within ICE are reasonably likely to possess records responsive to that request, if
6 any, and task the relevant program offices with searches. Once the ICE FOIA Office
7 determines the appropriate program offices for a given request, it provides the POCs
8 within each of those program offices with a copy of the FOIA request and instructs them
9 to conduct a search for responsive records. The POCs then review the FOIA request,
10 along with any case-specific instructions that may have been provided and, based on
11 their experience and knowledge of their program office practices and activities, forward
12 the request and instructions to the individual employee(s) or component office(s) within
13 the program office that they believe are reasonably likely to have responsive records, if
14 any. In conformity with the ICE FOIA Office's instructions, the individuals and
15 component offices are directed to conduct searches of their file systems, including both
16 paper files and electronic files, which in their judgment, based on their knowledge of the
17 manner in which they routinely keep records, would most likely be the files to contain
18 responsive documents. Once those searches are completed, the individuals and
19 component offices provide any potentially responsive records to their program office's
20 POC, who in turn, provides the records to the ICE FOIA Office for processing. The ICE
21 FOIA Office then reviews the collected records for responsiveness and the application of
22 appropriate FOIA Exemptions.

23 13. ICE employees maintain records in several ways. ICE program offices use
24 various systems to maintain records, such as investigative files, records regarding the
25 operation of ICE programs, and administrative records. ICE employees may store
26 electronic records on their individual computer hard drives or their program office's
27 shared drive (if the office uses one). The determination of whether or not these electronic
28 locations must be searched in response to a particular FOIA tasking, as well as how to

1 conduct searches, is necessarily based on the manner in which the employee maintains
2 his/her files.

3 14. Additionally, all ICE employees have access to e-mail. ICE uses the
4 Microsoft Outlook e-mail system. Each ICE employee stores his/her files in the way that
5 works best for that particular employee. ICE employees use various methods to store
6 their Microsoft Outlook e-mail files - some archive their files monthly, without
7 separating by subject; others archive their e-mail by topic or by program; still others may
8 create PST files of their emails and store them on their hard drive or shared drive.

9 15. Records received by the ICE FOIA Office from the program office POCs
10 are assigned to a FOIA processor who determines whether or not the records are
11 responsive to the FOIA request. If the records are responsive, the FOIA processor will
12 redact information pursuant to the FOIA or Privacy Act, as appropriate, while
13 simultaneously ensuring that all reasonably segregated non-exempt information is
14 released.

15 16. Frequently, the ICE FOIA Office must coordinate between multiple
16 program offices to ensure the program office records are properly redacted and
17 information is correctly segregated. Once the ICE FOIA Office completes its
18 coordination efforts and all responsive records have been processed, the ICE FOIA
19 Office releases the responsive records to the requestor.

20 **III. DESCRIPTION OF PROGRAM OFFICES TASKED WITH**
21 **SEARCHING FOR RECORDS IN RESPONSE TO PLAINTIFF'S FOIA**
22 **REQUESTS**

23 17. ICE is the principal investigative arm of DHS and the second largest
24 investigative agency in the federal government. Created in 2003 through a merger of the
25 investigative and interior enforcement elements of the U.S. Customs Service and the
26 Immigration and Naturalization Service, ICE now employs more than 20,000 people in
27 offices in every state and in 48 foreign countries.

28 18. After reviewing the Request, and based on the information sought in the

1 Request, the experience and knowledge of ICE's practices and activities and discussions
2 with the Plaintiff, the ICE FOIA Office determined that because of the subject matter of
3 the Request, OPR, various subcomponents of ERO, the Office of Regulatory Affairs and
4 Policy ("ORAP"), and Homeland Security Investigations Joint Intelligence Operations
5 Center ("JIOC") were the program offices likely to have responsive records (if such
6 records existed). The ICE FOIA Office also agreed to search the emails of former ICE
7 Directors at Plaintiff's request. Therefore, based on their subject matter expertise and
8 knowledge of the agency record systems, the ICE FOIA Office instructed these program
9 offices to conduct a comprehensive search for records and to provide all potentially
10 responsive records located during that search to the ICE FOIA Office for review and
11 processing. Accordingly, and based on the information described below, all locations
12 likely to contain records responsive to the Request (to the extent that they exist within
13 ICE's custody) were searched.

14 **Subparts 1 Through 3**

15 19. Based on the information sought in the Request, and discussions between
16 the parties, with respect to subparts 1 through 3 of the Request, ICE searched the
17 following: (1) previous litigation files requesting records of the deceased individuals, (2)
18 the Los Angeles Field Office, (3) the Office of Professional Responsibility ("OPR")
19 External Reviews and Analysis Unit ("ERAU"), (4) the New Orleans Field Office
20 Director, (5) the New Orleans Field Office Acting Deputy Field Office Director, (6) the
21 New Orleans Field Office Contracting Officer Representative, (7) a New Orleans Field
22 Office Detention and Deportation Officer, (8) a New Orleans Field Office Supervisory
23 Detention and Deportation Officer, (9) an Enforcement and Removals Operations IHSC
24 Investigations Unit Program Manager, (10) a Field Medical Coordinator, (11) four Los
25 Angeles Field Office Supervisory Deportation and Detention Officers, and (12) the
26 Acting Field Office Director in the Los Angeles Field Office. The results of those
27 searches are set forth below.

28 20. The first search that was undertaken was for responsive records within the

1 file of *Martin Vargas v. DHS, ICE* (Central District of California Case No. 22-cv-00287;
2 ICE FOIA Tracking Number: 2022-ICLI-00031). Within that case file, 2,444 pages of
3 responsive records were found and produced. The same 2,444 pages of records were
4 produced in the instant matter.

5 21. The Office of Enforcement and Removal Operations (“ERO”) was also
6 searched. ERO manages all aspects of the immigration enforcement process, including
7 the identification, arrest, detention and removal of aliens who are subject to removal or
8 are unlawfully present in the U.S. ERO maintains 25 field offices across the nation.

9 22. The Los Angeles Field Office and the New Orleans Field Office of ERO
10 were searched due to the four decedents being detained at detention facilities in one of
11 those areas of responsibility. As a result, the following individuals conducted searches:

12 a) On August 15, 2022, a Supervisory Detention and Deportation Officer in
13 the New Orleans Field Office conducted a search of his desktop, hard drive, shared drive
14 and Outlook folders for the terms: Teka and Gulema. Records were found and processed.

15 b) On August 16, 2022, the Acting Field Office Director from the Los Angeles
16 Field Office conducted a search of his desktop, hard drive, shared drive and Outlook
17 folders for the terms: release and Vargas, release and death, release and hospital, release
18 and Ibarra, Ibarra Bucio and Vargas Arellano. Records were found and processed.

19 c) On August 16, 2022, a Supervisory Detention and Deportation Officer in
20 the Los Angeles Field Office searched his desktop, hard drive, shared drive and Outlook
21 folders for the terms: Arellano, Vargas Arellano, 205718808, 808 and Jose Ibarra Bucio.
22 Records were found and processed.

23 d) On August 19, 2022, a Supervisory Detention and Deportation Officer in
24 the New Orleans Field Office conducted a search of his desktop, hard drive, shared drive
25 and Outlook folders for the terms: Teka, Gulema and Teka Gulema. Records were found
26 and processed.

27 e) On August 22, 2022, the Acting Field Office Director from the Los Angeles
28 Field Office, searched his desktop, hard drive, shared drive and Outlook folders for the

1 terms “Vargas-Arellano, Martin” and “Ibarra-Bucio, Jose.” Records were found and
2 processed.

3 f) On August 22, 2022 a Supervisory Detention and Deportation Officer in the
4 Los Angeles Field Office searched his desktop, hard drive, shared drive and Outlook
5 folders for the terms: Teka Gulema, Johana Medina Leon, Jose Ibarra Bucio and Martin
6 Vargas Arellano. Records were found and processed.

7 g) On August 22, 2022, a Supervisory Detention and Deportation Officer from
8 the Los Angeles Field Office searched his Outlook folders for the terms: Arellano, Jose
9 Ibarra Bucio, SEN, SIR, Bucio and Martin Vargas Arellano. Records were found and
10 processed.

11 h) On August 23, 2022, a Supervisory Detention and Deportation Officer from
12 the Los Angeles Field Office searched her Outlook folders using the terms: Arellano,
13 Ibarra Bucio, Arellano-Vargas and Ibarra. Records were found and processed.

14 i) On August 24, 2022, the Acting Deputy Field Office Director in the New
15 Orleans Field Office conducted a search of his desktop, hard drive, shared drive and
16 Outlook folders for the term: Gulema. Records were found and processed.

17 j) On August 24, 2022, the Contracting Officer Representative in the New
18 Orleans Field Office ran a search of his desktop, hard drive, shared drive and Outlook
19 folders for the term: Teka Gulema. Records were found and processed.

20 k) On August 26, 2022, a Field Medical Coordinator in the New Orleans Field
21 Office conducted a search of his desktop, hard drive, shared drive and Outlook folders
22 for the terms: Teka Gulema and 028021556. Records were found and processed.

23 l) After conferring with Plaintiff, ICE agreed to obtain the emails of the
24 former Los Angeles Field Office Director for the time period of June 30, 2015 through
25 March 30, 2016. In October 2024, at Plaintiff’s request, these emails were searched for
26 the following terms:

27 “Headquarters Removal and International Operations” or “HQRIO” and
28 “Gulema.”

1 “Post Order Custody Review” or “POCR” and “Gulema.”

2 “ICE Health Service Corps,” or “IHSC,” and “Gulema.”

3 “HQ ERO Domestic Operations”

4 This search resulted in over 20,000 pages. Plaintiff agreed to waive production of
5 all but 6 Significant Event Notification (SEN) emails that were included in the search
6 results from the time period of November 19, 2015 through November 30, 2015, which
7 equated to approximately 1,185 pages. Plaintiff also agreed to waive production of
8 approximately 25,000 pages of records pertaining to Mr. Gulema.

9 23. The ICE FOIA Office also determined that OPR might be in possession of
10 potentially responsive records. OPR is responsible for investigating allegations of
11 employee misconduct impartially, independently, and thoroughly. OPR prepares
12 comprehensive reports of investigation for judicial or management action. OPR inspects
13 and reviews ICE offices, operations and processes in order to provide executive
14 management with an independent review of the agency’s organizational health and
15 assess the effectiveness and efficiency of the overall ICE mission.

16 24. The OPR ERAU conducts Detainee Death Reviews (DDRs), which are
17 independent, objective examinations of the facts and circumstances surrounding the
18 detention and death of an individual in ICE custody to determine whether the agency and
19 detention facility complied with detention standards related to the individual’s health,
20 safety, and security.

21 25. On August 19, 2021, the Section Chief from the OPR ERAU conducted a
22 search of his desktop, hard drive, shared drive and Outlook folders for the terms: Teka
23 Gulema, Johana Medina Leon, Jose Ibarra Bucio, Martin Vargas Arellano, Etowah
24 County Detention Center, Otero County Processing Center, Adelanto ICE Processing
25 Center, Riverview Medical Center, Del Sol Medical Center, Loma Linda University
26 Medical Center, and St. Jude Medical Center. No responsive records were found.

27 26. On July 21, 2022, OPR was again tasked with conducting a search. No
28 responsive records were found.

27. It was determined that the ERO ICE Health Services Corp (IHSC) might also be in possession of responsive records. The IHSC administers a detention health system that provides direct healthcare in ICE-owned facilities. IHSC also oversees non-IHSC facilities' compliance with national detention standards and the coordination of off-site care through medical referrals.

28. On August 12, 2022, an ERO IHSC Investigations Unit Program Manager conducted a search of her Outlook folders for the names of all four decedents (Teka Gulema; Johana Medina Leon; Jose Ibarra Bucio; and Martin Vargas Arellano). Records were found and processed.

29. Plaintiff now requests that the individuals on a March 4, 2021 email chain be required to search for the terms “Vargas Arellano” or “Vargas-Arellano” or “Martin w/5 Vargas or Martin w/5 Arellano or “A205718808” or “205-718-808” or “205 718 808.” However, all but two of the individuals on the March 4, 2021 email chain have already run searches using Mr. Vargas’ name and alien number and have found records that were processed and produced. There is no reason to believe the two detention and deportation officers on the email chain who did not run searches would have any additional information. Their searches would likely turn up duplicative records.

Subpart 4

30. Based on the information sought in the Request, its experience and knowledge of ICE's practices and activities, and discussions between the parties, with respect to subpart 4, the ICE FOIA Office searched ERO IHSC, the Office of Regulatory Affairs and Policy (ORAP), emails of former ICE Directors and emails of three individuals from the ICE Office of the Director.

31. As noted above, the ERO IHSC administers a detention health system that provides direct healthcare in ICE-owned facilities.

32. On August 16, 2022, a health policy administrator with ERO IHSC searched the Electronic Policy Development System for the search terms: transfer, discharge, covid-19, illness and medical care. The search resulted in 27 pages being

1 found, which were processed and produced.

2 33. On July 18, 2023, at Plaintiff's request, ICE obtained the emails of ICE
3 Director Tae Johnson, Assistant Director of Policy Deborah Fleischaker and Assistant
4 Director for Regulatory Affairs and Policy Scott Shuchart for the following search terms:
5 (1) Directive; (2) Policy; (3) Protocol; (4) Procedure; (5) Training; (6) Guidance; (7)
6 Instruction; (8) Standard; (9) Death; (10) "offsite referral"; (11) "emergency room"; (12)
7 "emergency department"; (13) "life support"; (14) Coma; (15) Ventilator; (16)
8 "intensive care"; (17) Hospice; (18) palliative; and (19) release.

9 34. The search of the director emails resulted in approximately 530,000
10 documents. Plaintiff then requested that the search be run in two separate parts, with the
11 first part seeking the following terms and Boolean connectors: directive or policy or
12 policies or protocol or procedure or training or guidance or instruction or standard) AND
13 (custody or death or died or deceased or decedent or discharge or surgery or specialist or
14 COVID-19 or hospital or ambulance or "emergency room" or "emergency department"
15 or "emergency services" or "poor outcome" or "life support" or "offsite referral" or
16 coma or unconscious or ventilator or "intensive care" or "medical observation" or ICU
17 or "critical condition" or hospice or palliative or fatal). The results of that search were
18 then searched with the following terms: (release or transfer or benefits or parole or
19 "alternative detention" or discharge or OSUP or "order of supervision"). This resulted in
20 approximately 142,000 documents. Plaintiff ultimately decided not to pursue production
21 of these documents.

22 35. Upon reviewing the Request and based on its experience and knowledge of
23 ORAP's practices and activities, the ICE FOIA Office tasked the Office of Regulatory
24 Affairs and Policy (ORAP) with a search for records responsive to part 4 of the Request.

25 36. ORAP collaborates with internal and external stakeholders to identify,
26 develop and effectively communicate ICE's strategic and organizational policies;
27 regulations and regulatory processes; and operational requirements.

28 37. On December 6, 2023, a policy subject matter expert with ORAP searched

1 the ICE Policy Manual, the ICE intranet, her desktop, hard drive, shared drive and
2 Outlook folders for the terms: hospital, health, release, Covid-19, accommodation and
3 detainee treatment. The search resulted in 16 pages of records found, which were
4 processed and produced.

5 38. On October 15, 2024, at the request of Plaintiff, ORAP conducted a second
6 search where a policy subject matter expert searched the ICE Policy Manual, the ICE
7 intranet, her desktop, hard drive, shared drive, and Outlook folders for the terms:
8 11003.4, critical condition, hospice, death, intensive care, terminal, life support, ICE and
9 release. No records were found.

10 39. After conferring with Plaintiff, it was agreed that ICE would request that
11 ORAP conduct a third search of agreed upon search terms. On October 11, 2024, ORAP
12 was asked to search for the following search terms: death, life support, critical condition,
13 intensive care, ICU and hospice. The time period for the search was January 1, 2016
14 through the present. ORAP was also asked to provide ICE Directive 11003.4. As a result
15 of this search, three documents which totaled over 1,700 pages. The records were
16 processed and produced. ICE Directive 11003.4 was also produced.

17 **Subpart 5**

18 40. Based on the information sought in the Request, the experience and
19 knowledge of ICE's practices and activities, and discussions between the parties, with
20 respect to subpart 5, the ICE FOIA Office tasked ERO IHSC and OPR to conduct
21 searches.

22 41. OPR noted that they do not collect SIRs or SENs. OPR maintains death
23 reports and case notes only for detainees who die in ICE custody. If a detainee is
24 transferred to a hospital and released from custody and they die there, OPR would not
25 have records on this. Once a detainee is transferred out of ICE custody, then it is not
26 within OPR's scope to do a detainee death review. If a detainee is transferred to an
27 external health care provider but still in ICE custody, then OPR would have records.

28 42. On August 21, 2023, the Assistant Director of the ICE Health Services

1 Corps conducted a search of his desktop, shared drive, hard drive, and Outlook folders
2 for the following agreed upon terms: (1) Death; (2) Died; (3) Deceased; (4) Ambulance;
3 (5) Emergency; (6) “offsite referral”; (7) “life support”; (8) Coma; (9) Ventilator; (10)
4 “intensive care”; (11) “critical condition”; (12) Hospice; (13) Palliative; and (14)
5 Release.

6 43. Once the search results were obtained, the following Boolean connectors
7 were entered and searched at Plaintiff’s request: (release or transfer or benefits or parole
8 or “alternative detention” or discharge or OSUP or “order of supervision” or
9 humanitarian) AND (custody or death or died or deceased or surgery or specialist or
10 COVID-19 or hospital! or ambulance or “emergency room” or “emergency department”
11 or “emergency services” or “poor outcome” or “life support” or “offsite referral” or
12 coma or unconscious or ventilator or “intensive care” or “medical observation” or ICU
13 or “critical condition” or hospice or palliative or fatal.)

14 44. The search resulted in 551 pages, which were processed and produced.

15 45. On November 17, 2023, an email was sent to the Deputy Chief of Staff of
16 IHSC inquiring as to whether she was aware of the existence of a spreadsheet or list of
17 some sort that identifies detainees who were released from custody while (a) hospitalized
18 (including for COVID-19 treatment); (b) in the full-time care of external healthcare
19 providers or facilities (including for COVID-19 treatment), or (c) released from custody
20 immediately prior to transfer to an emergency room, hospital, or external care facility.
21 She indicated that IHSC does not maintain this type of document.

22 46. The ERO Information Disclosure Unit previously noted that possible
23 records could only be discovered through the creation of a list of detainees. IHSC
24 cannot create a list for the purposes of FOIA to then find FOIA records, in an attempt to
25 satisfy the Plaintiff’s curiosity

26 47. Plaintiff further requested that ICE search for records related to the
27 Significant Detainee Illness (“SDI”) meetings and list. ICE previously informed Plaintiff
28 that this request is burdensome as there are 233 IHSC employees who participated in the

1 SDI process from 2016 to present. The number of ICE employees that were part of the
2 Medical Case Management Unit from 2016 to present is 376. Plaintiff's request to
3 narrow states "we proposed a compromise that Defendants limit the search to staff who
4 participate in the weekly SDI meeting, and any custodian who possesses the SDI list."
5 However, as noted above, that list includes hundreds of individuals and is overly
6 burdensome.

7 **Subpart 6**

8 48. Based on the information sought in the Request, the experience and
9 knowledge of ICE's practices and activities, and discussions between the parties, with
10 respect to subpart 6, ICE searched OPR, ERO IHSC, HSI Joint Intelligence Operations
11 Center ("JIOC"), ERO Custody Management and ERO Field Operations.

12 49. On August 8, 2023, a Section Chief at OPR conducted a search of her
13 desktop, hard drive and shared drive, as well as her Outlook folders using the terms
14 agreed upon by the Plaintiff, which included: death, died, deceased, coma, ventilator,
15 ambulance, emergency, intensive care, critical condition, offsite referral, life support,
16 hospice, palliative and release. No responsive records were found except for ICE
17 Directive 11003.5. This directive was produced.

18 50. On August 8, 2023, a Management and Program Analyst with OPR
19 conducted a search of the Office of Detention Oversight Inspection Modernization
20 System ("ODO IMS"), as well as his desktop, shared drive, hard drive and Outlook
21 folders using the search terms agreed upon by the Plaintiff, which included: death, died,
22 deceased, coma, ventilator, ambulance, emergency, intensive care, critical condition,
23 offsite referral, life support, hospice, palliative and release. No responsive records were
24 found.

25 51. The Unit Chief for OPR ICE Inspections sent an email on August 10, 2023
26 explaining that while the term "death" was searched and was identified in several records
27 within the system, when associated with the specific requests in Subparts 6 and 7, there
28 were no responsive records as the scope of ODO inspections does not extend to released

1 detainees.

2 52. The Plaintiff requested that the Joint Intelligence Operations Center
3 (“JIOC”) conduct a search for responsive records. JIOC coordinates information sharing
4 and situational awareness. JIOC Watch Officers go into the SEN database to identify
5 SENs that meet reporting threshold. Once a SEN has been identified as meeting
6 reporting threshold, the JIOC Watch Officer then transposes the SEN write up into an
7 executive summary for their daily reporting products that are distributed to DHS, ICE,
8 ERO, and HSI leadership.

9 53. The summaries are not stored in one place. They are moved from emails to
10 the Daily Enforcement Activity Report (“DEAR”) system. There is one DEAR for every
11 24-hour period. In order to search this system, someone would have to go in and check
12 search terms for each individual day. Additionally, the system does not keep track of
13 when individuals are released from custody.

14 54. On December 6, 2023, JIOC was tasked to conduct a search for documents
15 responsive to Subparts 6 and 7. JIOC responded that it was not the owner of the data
16 points requested and it deferred the request to ERO Custody Management and ERO
17 IHSC.

18 55. On December 6, 2023, OPR was again tasked to search for records
19 responsive to subpart 6 of the Request. On December 11, 2023, OPR responded that they
20 had no responsive records as the individuals noted in the Request did not die in ICE
21 custody.

22 56. On January 3, 2024, the Chief of IHSC’s Investigations Unit conducted a
23 search of her shared drive and Outlook folders for the terms: hospitalized, external
24 healthcare, release, transfer, death, emergency room and external care. No records were
25 found.

26 57. On January 4, 2024, a Managed Care Coordinator with ERO IHSC
27 conducted a search of Excel spreadsheets in her shared drive for the terms: release,
28 hospital, emergency room, long-term, facility and rehab. She also conducted a search of

1 her Outlook folders for the terms: UPTS, hospital, release, emergency room, facility and
2 rehab. Records were found and processed.

3 58. Based on the information sought in the Request and the experience and
4 knowledge of ICE's practices and activities, the ICE FOIA Office tasked the Custody
5 Programs Division with conducting a search. The Custody Programs Division is a subset
6 of the Custody Management Division, which provides policy and oversight of those in
7 ICE custody and manages ICE detention operations. The Custody Programs Division
8 develops and promotes best practices in civil detention and enforcement initiatives by
9 providing policy support, facilitating the implementation of applicable ICE directives,
10 and expanding ERO's capacity to manage special populations.

11 59. On January 4, 2024, the Acting Deputy Assistant Director of the ERO
12 Custody Programs Division conducted a search of his desktop, shared drive and hard
13 drive using the search term: detainee death directive. The Acting Director also noted that
14 Custody Management does not manage SIRs or SENs and deferred to Field Operations.

15 60. The ERO Field Operations Division provides guidance to and coordination
16 among ICE ERO's 25 field offices across the nation. They oversee, direct and coordinate
17 all ERO Field Operations activities throughout the nation's field offices and sub-offices.

18 61. On January 4, 2024, a Mission Support Specialist with ERO Field
19 Operations reviewed the Request and on January 17, 2024, an email was sent stating that
20 field operations does not maintain data in relation to the request.

21 **Subpart 7**

22 62. Based on the information sought in the Request, the experience and
23 knowledge of ICE's practices and activities, and discussions between the parties, with
24 respect to subpart 7, ICE searched OPR, ERO IHSC, HSI JIOC, ERO Custody
25 Management and ERO Field Operations.

26 63. On August 8, 2023, a Section Chief at OPR conducted a search of her
27 desktop, hard drive and shared drive, as well as her Outlook folders using the terms
28 agreed upon by the Plaintiff, which included: death, died, deceased, coma, ventilator,

1 ambulance, emergency, intensive care, critical condition, offsite referral, life support,
2 hospice, palliative and release. No responsive records were found except for ICE
3 Directive 11003.5. This directive was produced.

4 64. OPR further noted that they maintain death reports and case notes only for
5 detainees who die in ICE custody. If a detainee is transferred to a hospital and released
6 from custody and they die there, OPR would have records on the patient. Once a
7 detainee is transferred out of ICE custody, then it is not within OPR's scope to conduct a
8 detainee death review.

9 65. On August 8, 2023, a Management and Program Analyst with OPR
10 conducted a search of the Office of Detention Oversight Inspection Modernization
11 System ("ODO IMS"), as well as his desktop, shared drive, hard drive, and Outlook
12 folders using the search terms agreed upon by the Plaintiff, which included: death, died,
13 deceased, coma, ventilator, ambulance, emergency, intensive care, critical condition,
14 offsite referral, life support, hospice, palliative and release. No responsive records were
15 found.

16 66. The Unit Chief for OPR ICE Inspections sent an email on August 10, 2023
17 explaining that while the term "death" was searched and was identified in several records
18 within the system, when associated with the specific requests in Subparts 6 and 7, there
19 were no responsive records as the scope of ODO inspections does not extend to released
20 detainees.

21 67. On December 6, 2023, the Joint Intelligence Operations Center ("JIOC")
22 was tasked to conduct a search for documents responsive to Subparts 6 and 7. JIOC
23 responded that it was not the owner of the data points requested and it deferred the
24 request to ERO Custody Management and ERO IHSC.

25 68. On January 3, 2024, the Chief of IHSC's Investigations Unit conducted a
26 search of her shared drive, and Outlook folders for the terms: hospitalized, external
27 healthcare, release, transfer, death, emergency room and external care. No records were
28 found.

69. On January 4, 2024, a Mission Support Specialist with ERO Field Operations reviewed the request and on January 17, 2024, an email was sent stating that field operations does not maintain data in relation to the request.

70. On January 17, 2024, ERO Custody Management responded that they do not manage SIRs or SENs and deferred to Field Operations. Custody Management did, however, provide ICE Directive 11003.5, which was produced to Plaintiff.

Subpart 8

71. Based on the information sought in the Request, the experience and knowledge of ICE's practices and activities, and discussions between the parties, with respect to subpart 8, ICE searched ERO IHSC.

72. On August 21, 2023, Dr. Stewart Smith, Assistant Director of IHSC, conducted a search of his desktop, hard drive, shared drive, and Outlook folder using search terms agreed upon with the Plaintiff: (1) Ambulance; (2) 911; (3) Emergency; (4) "offsite referral"; (5) "life support"; (6) Coma; (7) Ventilator; (8) "intensive care"; (9) "critical condition"; (10) "poor outcome"; (11) Hospice; (12) Palliative; (13) Death; (14) Died; and (15) Deceased.

73. Once the search results were obtained, the following Boolean connectors were used, as requested by Plaintiff: (detainee or custody) AND (death or died or deceased or surgery or specialist or COVID19 or hospital! or ambulance or "emergency room" or "emergency department" or "emergency services" or "poor outcome" or "life support" or "offsite referral" or coma or unconscious or ventilator or "intensive care" or "medical observation" or ICU or "critical condition" or hospice or palliative or fatal) AND (release or transfer or benefits or parole or "alternative detention" or discharge or OSUP or "order of supervision" or humanitarian or "order of recognizance"). Approximately 1,711 pages were found, processed, and produced.

74. Plaintiff claims that ICE should search for documents located within the *Fraihat v. ICE* litigation. Aside from the fact that the Plaintiff did not request these documents in the original FOIA request, the Office of the Principal Legal Advisor

(OPLA) at ICE continues to litigate the *Frailhat* case and has done so since the beginning of the pandemic. OPLA has not been responsible for tracking hospitalizations or releases of detainees. To the extent such records *might* exist, OPLA has no way of searching for such records and they would have no way of knowing if a detainee had been released while hospitalized with COVID. The only way to find out which detainees were released would be to cross compare with ERO records but this is not required under the FOIA. ERO does not maintain a list of individuals who were released during hospitalization with COVID and ERO IHSC has already run several searches in this case. Lastly, OPLA noted that most of the reporting and discovery required under *Frailhat* was done under protective order. *See Frailhat v. ICE*, C.D. CA Case No. 19-cv-1546-JGB-SHKx, Dkt. 154 (Stipulated Protective Order).

Subpart 9

75. Based on the information sought in the Request, the experience and knowledge of ICE's practices and activities, and discussions between the parties, with respect to subpart 9, ICE searched ERO IHSC, the IHSC Resource Management Unit ("RMU") and the IHSC Health Plan Management Unit ("HPMU").

76. On August 22, 2022, a health informaticist with ERO IHSC conducted a search of Sharepoint and eClinicalWorks for the alien numbers and referral authorization numbers of the four decedents. A spreadsheet was found, processed, and produced.

77. On August 7, 2023, ICE tasked the IHSC RMU to search. The IHSC RMU is responsible for managing the resources allocated to provide healthcare to detained individuals.

78. The IHSC RMU was tasked with searching for the following terms: (1) Death; (2) Died; (3) Deceased; (4) Ambulance; (5) Emergency; (6) Hospital; (7) "offsite referral;" (8) "life support;" (9) coma; (10) ventilator; (11) "intensive care;" (12) "Critical condition;" (13) hospice; (14) palliative; and (15) release.

79. On August 14, 2023, the RMU responded that they are not involved in billing and they recommended tasking the IHSC HPMU. The HPMU oversees the

1 approval of referrals to receive care outside of the ICE health care system.

2 80. The HPMU was tasked and responded that they cannot search for the
3 information sought in subpart 9 without specific names. They recommended tasking the
4 Regional Health Service Administrator (“HAS”) and the Regional Field Medical
5 Coordinator (“FMC”). These units were tasked on November 14, 2023, and just one
6 individual stated that they had over 16,000 emails. While the FMCs and HSAs were
7 separately tasked with running a search agreed to by the parties in November 2023, *see*
8 Dkt. 112-4 at 75, both the FMCs and HSAs stated that such a search was too broad and
9 causing their systems to crash. The issue was discussed with the FMCs and HSAs and on
10 January 3, 2024, it was determined that they would not be able to identify information
11 responsive to subpart 9 without searching for specific names.

12 81. Since the HPMU had the names of the four decedents, they were able to
13 provide an Excel spreadsheet with claims information for all 4 decedents. That
14 spreadsheet was processed.

15 **IV. RECORDS PROCESSED**

16 82. Based on the above searches, a total of 53,426 pages of potentially
17 responsive records were located, along with 911 pages of records referred to ICE from
18 other departments. Of those 53,426 pages, 21,153 pages and an Excel spreadsheet were
19 determined to be responsive and produced to the Plaintiff.

20 83. Regarding the records that were produced to Plaintiff, a line-by-line review
21 was conducted to identify information exempt from disclosure or for which a
22 discretionary waiver of exemption could be applied. Based on this review, ICE released
23 all reasonably segregable portions of records responsive to Plaintiff’s Request.

24 84. On November 17, 2022, ICE issued its first interim response to the Plaintiff.
25 The response states that the ICE FOIA Office reviewed 2,769 pages of potentially
26 responsive records. Of the 2,769 pages, 2,444 pages were released in full or in part; 26
27 pages were deemed non-responsive; and 299 pages were duplicates.

28 85. On December 20, 2022, ICE issued its second interim response. In that

1 response, the ICE FOIA Office reviewed 500 pages of potentially responsive records. Of
2 the 500 pages, 456 pages were released in full or in part; 15 pages were deemed non-
3 responsive; and 29 pages were duplicates.

4 86. On January 19, 2023, ICE issued its third interim response. In that response,
5 the ICE FOIA Office reviewed 500 pages of potentially responsive records. Of the 500
6 pages, 481 pages were released in full or in part; 16 pages were deemed non-responsive;
7 and 3 pages were duplicates.

8 87. On February 22, 2023, ICE issued its fourth interim response. In that
9 response, the ICE FOIA Office reviewed 1,001 pages of potentially responsive records.
10 Of the 1,001 pages, 688 pages were released in full or in part and 313 pages were
11 duplicates.

12 88. On March 10, 2023, ICE issued its fifth interim response. In that response,
13 the ICE FOIA Office reviewed 1,009 pages of potentially responsive records. Of the
14 1,009 pages, 728 pages were released in full or in part; 6 pages were deemed non-
15 responsive; and 275 pages were duplicates.

16 89. On April 12, 2023, ICE issued its sixth interim response. In that response,
17 the ICE FOIA Office reviewed 1,007 pages of potentially responsive records. Of the
18 1,007 pages, 442 pages were released in full or in part and, 565 pages were duplicates.

19 90. On May 22, 2023, ICE issued its seventh interim response. In that response,
20 the ICE FOIA Office reviewed 1,091 pages of potentially responsive records. Of the
21 1,091 pages, 664 pages were released in full or in part and 427 pages were duplicates.

22 91. On June 20, 2023, ICE issues its eighth interim response. In that response,
23 the ICE FOIA Office reviewed 1,052 pages of potentially responsive records. Of the
24 1,052 pages, 1,033 pages were released in full or in part and 19 pages were duplicates.

25 92. On July 19, 2023, ICE issued its ninth interim response. In that response,
26 the
27 ICE FOIA Office reviewed 1,080 pages of potentially responsive records. Of the 1,080
28 pages, 516 pages were released in full or in part; 40 pages were deemed non-responsive;

1 and 524 pages were duplicates.

2 93. On August 18, 2023, ICE issued its tenth interim response. In that response,
3 the ICE FOIA Office reviewed 1,000 pages of potentially responsive records. Of the
4 1,000 pages, 900 pages were released in full or in part; 5 pages were deemed non-
5 responsive; and 95 pages were duplicates.

6 94. On September 21, 2023, ICE issued its eleventh interim response. In that
7 response, the ICE FOIA Office reviewed 1,004 pages of potentially responsive records.
8 Of the 1,004 pages, 985 pages were released in full or in part; 4 pages were deemed non-
9 responsive; and 15 pages were duplicates.

10 95. On October 18, 2023, ICE issued its twelfth interim response. In that
11 response, the ICE FOIA Office reviewed 1,028 pages of potentially responsive records.
12 Of the 1,028 pages, all pages were released in full or in part.

13 96. On November 17, 2023, ICE issued its thirteenth interim response. In that
14 response, the ICE FOIA Office reviewed 1,605 pages of potentially responsive records.
15 Of the 1,605 pages, 730 pages were released in full or in part and 875 pages were
16 duplicates.

17 97. On December 20, 2023, ICE issued its fourteenth interim response. In that
18 response, the ICE FOIA Office reviewed 1,013 pages of potentially responsive records.
19 Of the 1,013 pages, all pages were released in full or in part.

20 98. On January 20, 2024, ICE issued its fifteenth interim response. In that
21 response, the ICE FOIA Office reviewed 1,125 pages of potentially responsive records.
22 Of the 1,125 pages, 184 pages were released in full or in part and 941 pages were
23 duplicates.

24 99. On February 21, 2024, ICE issued its sixteenth interim response. In that
25 response, the ICE FOIA Office reviewed 1,033 pages of potentially responsive records.
26 Of the 1,033 pages, 810 pages were released in full or in part; 181 pages were deemed
27 non-responsive; and 42 pages were duplicates.

28 100. On February 28, 2024, ICE made a supplemental production of 16 pages

1 that had previously been marked as non-responsive.

2 101. On March 21, 2024, ICE issued its seventeenth interim response. In that
3 response, the ICE FOIA Office reviewed 3,000 pages of potentially responsive records.
4 Of the 3,000 pages, all were released in full or in part.

5 102. On April 19, 2024, ICE issued its eighteenth interim response. In that
6 response, the ICE FOIA Office reviewed 1,748 pages of potentially responsive records
7 and 17 Excel documents (amounting to 1,854 printable pages), for a total of 3,602 pages.
8 Of the 3,602 pages, 293 pages were released in full or in part; 3,046 pages were deemed
9 non-responsive; and 263 pages were duplicates.

10 103. On May 21, 2024, ICE issued its nineteenth interim response. In that
11 response, the ICE FOIA Office reviewed 3,004 pages of potentially responsive records.
12 Of the 3,004 pages, 2,433 pages were released in full or in part and 571 pages were
13 deemed non-responsive.

14 104. On June 13, 2024, ICE issued its twentieth interim response. In that
15 response, the ICE FOIA Office reviewed 3,003 pages of potentially responsive records.
16 Of the 3,003 pages, 851 pages were released in full or in part and 2,152 were duplicates.

17 105. On July 20, 2024, ICE issued its twenty-first interim response. In that
18 response, the ICE FOIA Office reviewed 3,220 pages of potentially responsive records.
19 Of the 3,220 pages, 142 pages were released in full or in part and 3,078 were duplicates.

20 106. August 16, 2024, ICE issued its twenty-second interim response. In that
21 response, the ICE FOIA Office reviewed 4,428 pages of potentially responsive records.
22 Of the 4,428 pages, 36 pages were released in full or in part and 4,392 were duplicates.

23 107. On September 19, 2024, ICE issued its twenty-third interim response. In
24 that response, the ICE FOIA Office reviewed 3,066 pages of potentially responsive
25 records. Of the 3,066 pages, 43 pages were released in full or in part and 3,023 pages
26 were duplicates.

27 108. On October 21, 2024, ICE issued its twenty-fourth interim response. In that
28 response, the ICE FOIA Office reviewed 3,042 pages of potentially responsive records.

1 Of the 3,042 pages, 52 pages were released in full or in part and 2,990 were duplicates.

2 109. On November 20, 2024, ICE issued its twenty-fifth interim response. In that
3 response, the ICE FOIA Office reviewed 3,112 pages of potentially responsive records.
4 Of the 3,112 pages, 269 pages were released in full or in part and 2,843 pages were
5 duplicates.

6 110. On December 17, 2024, ICE issued its twenty-sixth interim response. In
7 that response, the ICE FOIA Office reviewed 3,324 pages of potentially responsive
8 records. Of the 3,324 pages, 52 pages were released in full or in part and 3,272 pages
9 were duplicates.

10 111. On January 28, 2025, ICE issued its twenty-seventh interim response. In
11 that response, the ICE FOIA Office reviewed 2,792 pages of potentially responsive
12 records. Of the 2,792 pages, 9 pages were released in full or in part; 2,187 pages were
13 deemed non-responsive; and 594 pages were duplicates.

14 I declare under penalty of perjury of the laws of the United States of America that
15 the forgoing is true and correct to the best of my knowledge and belief.

16 Executed on March __, 2025, at Washington, D.C.

17 **FERNANDO** Digitally signed by
18 **PINEIRO JR** FERNANDO PINEIRO JR
19 Date: 2025.03.19
14:13:12 -04'00'

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